

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
STRAUSS, :  
:  
Plaintiff, : 06-CV-702 (DLI)  
v. :  
CREDIT LYONNAIS, : March 5, 2013  
:  
Defendant. : Brooklyn, New York  
:  
-----X

WOLF, :  
:  
Plaintiff, : 07-CV-914 (DLI)  
v. :  
CREDIT LYONNAIS, :  
:  
Defendant. :  
:  
-----X

WEISS, et al, :  
:  
Plaintiffs, : 05-CV-4622 (DLI)  
v. :  
NATIONAL WESTMINSTER BANK, et al, :  
:  
Defendants. :  
:  
-----X

APPLEBAUM, :  
:  
Plaintiff, : 07-CV-916 (DLI)  
v. :  
NATIONAL WESTMINSTER BANK, et al., :  
:  
Defendants. :  
:  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE  
BEFORE THE HONORABLE MARILYN D. GO  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Strauss and Weiss: GARY M. OSEN, ESQ.  
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For Applebaum and Wolf: JOEL ISRAEL, ESQ.  
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Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1           THE COURT:   Strauss v. Credit Lyonnais, docket  
2   number 2006-CV-702; Wolf v. Credit Lyonnais, docket number  
3   2007-CV-914; Weiss v. National Westminster Bank, docket number  
4   2005-CV-4622; Applebaum v. National Westminster Bank, docket  
5   number 2007-CV-916. Will counsel present please state their  
6   names for the record. For the Strauss and Weiss plaintiffs?

7           MR. OSEN:   For the Strauss and Weiss plaintiffs,  
8   Your Honor, Gary Osen from Osen, LLC.

9           THE COURT:   The Applebaum and Wolf plaintiffs?

10          MR. ISRAEL:   Your Honor, Joel Israel from Sayles  
11   Werbner.

12          THE COURT:   And for the defendants in all four  
13   cases?

14          MR. FRIEDMAN:   Lawrence Friedman, Cleary, Gottlieb,  
15   Steen and Hamilton.

16          THE COURT:   Okay. I've taken a look at the papers  
17   and I agree with the defendants that the employment records  
18   may provide relevant evidence as to the abilities of the  
19   plaintiffs. I mean notwithstanding the fact that they haven't  
20   sought lost wages or that they're claiming a diminishment of  
21   their abilities to perform work, there may be information in  
22   the files of their employers that may have bearing on their  
23   claims of emotional injuries and their ability to engage in  
24   life functions.

25          So I mean given the passage of time I think that

1 what the defendant is seeking is reasonable temporally two  
2 years from before the attack for baseline information and then  
3 information through the present.

4 What I would like to do though is talk about  
5 narrowing exactly what sorts of information would be  
6 discoverable.

7 MR. FRIEDMAN: If I can make an attempt at that,  
8 Your Honor? Our rationale is not to get salary information,  
9 withholding tax information, or anything like that. What we'd  
10 like to get is information from the files that will indicate  
11 the precise positions that each of these individuals held,  
12 although I do have the titles from them that they held. But  
13 what I'd most be interested in is anything in these files that  
14 describe the work that they did in these positions and  
15 anything that describes any complaints about their inability  
16 to do the work or any limitations in doing the work, and  
17 anything relating to any evaluations of their job performance.

18 Now, while those limitations would be agreeable  
19 because that's really why I'm focused on this, I do have a  
20 concern about how to implement those limitations because what  
21 the plaintiffs have preferred that we do is get authorizations  
22 from and then go after the employers themselves. If we're  
23 going to put these kinds of limitations --

24 THE COURT: I don't quite understand what that  
25 means.

1 MR. FRIEDMAN: My point is, Your Honor, that it  
2 would be more difficult for us to interact with the employers  
3 with these limitations in mind than it would be for the  
4 plaintiffs themselves to do so. And I base that on our  
5 experience with the physicians where we have received from the  
6 plaintiffs authorizations to go to the physicians, present the  
7 authorizations, and then get the records from the physicians.  
8 And as none of us like, it's taking a very long time because  
9 the physicians don't have a vested interest. And I've asked  
10 the plaintiffs to help prod their physicians along and  
11 sometimes it works and sometimes it doesn't.

12 Here, if we're going to put substantive limitations  
13 on what in the personnel files is produced, which I'm happy to  
14 do along the lines that I just said, I would suggest that we  
15 proceed in a different format and a different methodology than  
16 we've been proceeding thus far because these employers don't  
17 know me, don't know where I'm coming from, and don't know  
18 about the case, but they do know these four plaintiffs. And  
19 in fact, two of the four plaintiffs have just had one employer  
20 throughout the relevant period, the third has had two  
21 employers, and the fourth has had about half a dozen  
22 employers. So I would ask in the interest of expedience  
23 because we are trying to take the depositions, which means we  
24 want to have these documents as promptly as possible, I would  
25 suggest that while the substantive limitations are fine, that

1 instead of proceeding by the methodology of my getting  
2 authorizations to go to these employers and get these  
3 documents and try to reason with them about the limitations  
4 and explaining that and whatnot, that we ask plaintiffs'  
5 counsel, because we are dealing only with four individuals  
6 with a very limited number of past and present employers, that  
7 they will implement Your Honor's ruling and they will, with  
8 their clients, go to these no more than ten employers, or 11  
9 employers and get the documentation for us as quickly as  
10 possible.

11 I had a discussion with Mr. Osen and Mr. Israel and  
12 others yesterday in which we agreed to try to get all of these  
13 depositions done in the next 45 days, which is what plaintiffs  
14 had proposed. I'm willing to go forward with those without  
15 all the medical records because I know that's the practical  
16 thing to do. And if I have to go back and speak to people  
17 again when I do get all the medical records, that's fine. But  
18 on this subject, because it has been languishing and because  
19 it's a very finite population of employers and documents, I  
20 would ask that plaintiffs' counsel be instructed to implement  
21 Your Honor's ruling with the limitations that I've suggested  
22 and then do their very best to get these documents to us asap  
23 so that we can conduct these depositions in the next month and  
24 a half.

25 THE COURT: Plaintiffs' counsel?

1           MR. OSEN: Your Honor, Gary Osen again for the  
2 Strauss and Weiss plaintiffs.

3           It's hard for me to respond to that for a number of  
4 reasons but if you'll indulge me for a moment since we're  
5 talking about four specific individuals, I can just tick off  
6 the three who are in the Strauss and Weiss case. We're  
7 talking about Jacob Steinmetz, Deborah Steinmetz, and Sarri  
8 Singer.

9           THE COURT: Right.

10          MR. OSEN: The first two I believe are the  
11 individuals that Mr. Friedman refers to having one employer in  
12 the relevant time period. So in one respect, that's an easier  
13 task, if you will, to try and accomplish whether it's done by  
14 Mr. Friedman or by the plaintiff.

15          I do want to go back without re-arguing the motion,  
16 or the motion and the back and forth on that, to just point  
17 out that Mr. Steinmetz testified in his prior deposition that  
18 his injuries from the attack had no effect, and that's  
19 literally verbatim, the testimony, no effect on his employment  
20 as an attorney. In the case of Mrs. Steinmetz, who works at  
21 the film archives library, her stated injuries are post  
22 traumatic stress which occurs, according to her deposition,  
23 basically in the car when she drives on the same road where  
24 the shooting took place and occasionally on the road when she  
25 hears news reports of other shootings taking place. So in

1 terms of the futility of this exercise, we have always been  
2 extremely dubious.

3           That having been said, we can certainly in those  
4 instances at least have an address with a current employer  
5 where we could seek records, although again honestly I don't  
6 think the issue of the positions of those particular  
7 plaintiffs is really at issue. Their jobs are fairly well  
8 described in the plaintiffs' profile forms and their prior  
9 depositions. But that being said, that's easier to do. But  
10 the results, which obviously we can't, you know, anticipate,  
11 but whether we send a letter on behalf of the plaintiffs or  
12 Mr. Friedman gets an authorization doesn't make a great deal  
13 of difference to us. With respect to -

14           MR. FRIEDMAN: Gary, can I just address those two  
15 before you leave them because --

16           MR. OSEN: Sure.

17           MR. FRIEDMAN: Okay. I appreciate that. I don't  
18 think this should take a lot of work, frankly, because both of  
19 the Steinmetzs work at the same place that they worked out  
20 during the relevant period. While we lawyers like to write  
21 letters, hopefully they can go to their current employers with  
22 your guidance or they can put you in touch with their current  
23 employers and while accounting for the time difference, I  
24 would hope this could be done over the phone so that we could  
25 get this done more quickly. We've all been working in good



1 faith for the last year to try to get these kinds of records  
2 through letters and whatnot and it takes a long time. So I  
3 have every confidence that if there's a more expeditious way  
4 for you to do it, you will.

5 MR. OSEN: Well, for us it's not an issue of whether  
6 it's done by phone or, you know, the mechanical standpoint.  
7 Presumably you would want us to document what the request was  
8 and that it conforms to whatever the Court orders. That's the  
9 only reason we speak of it in writing.

10 MR. FRIEDMAN: Yeah, we can do that.

11 MR. OSEN: We don't have an objection to asking for  
12 it, it's just depending on what the response is, we don't want  
13 to be put in the position of being accused of noncompliance  
14 because the way it was worded or the conversation ex parte if  
15 you will that was made by one employer or the other did not  
16 yield the kind of information we hoped for.

17 THE COURT: Okay. Well, perhaps if their positions  
18 haven't changed, do you need information regarding job  
19 responsibilities, Mr. Friedman?

20 MR. FRIEDMAN: Well, Your Honor, I don't think Mr.  
21 Osen said their positions haven't changed. Their positions  
22 have changed.

23 THE COURT: They worked, okay, for the same --

24 MR. FRIEDMAN: Their employers have not.

25 THE COURT: Okay. So I would think that they would,

1 if they were just to talk to their employers, you know, be  
2 able to flesh out the positions held and to the extent there  
3 are any documents regarding their job responsibilities you'll  
4 get them. I mean --

5 MR. FRIEDMAN: And their performance and any  
6 notations about any limitations on their performance. The  
7 transcript will show the categories that I outlined before.

8 THE COURT: Evaluations, you know, each employer  
9 tends to have different categories of documents so there has  
10 to be some catchall general description.

11 MR. FRIEDMAN: Right.

12 THE COURT: And just evaluations really, anything --

13 MR. FRIEDMAN: Right.

14 THE COURT: -- relating to their specific job, it  
15 might all be just everything in one file, complaints or  
16 disciplinary actions, right?

17 MR. FRIEDMAN: I don't even know, Your Honor,  
18 sitting here today whether ordinarily these employees would be  
19 entitled to see those files on their own requests.

20 [Inaudible] amongst my titles is not Israeli labor lawyer. So  
21 all we can do is ask for them if that's what the Court  
22 directs, but what comes of it, I don't know.

23 THE COURT: Okay. Well, why don't you try in the  
24 first instance.

25 MR. ISRAEL: Your Honor, if I could, this is Joel

1 Israel for the Wolf Applebaum plaintiffs. We just have Erik  
2 Schechter who's at issue here and he's the one that Mr.  
3 Friedman referenced as having six employers, which is right.  
4 He moved to the US in 2010 and went through about a six to  
5 nine month span where he worked at US Weekly and El Magazine  
6 and Monocle, which is another publication company. You know,  
7 we can try and contact him. I frankly don't know if he did  
8 freelance work with them for a few months, what that's going  
9 to -- if that's going to bear any fruit. If there's something  
10 -- if there's a limitation we can place on it beyond all six.  
11 There were several where he worked for several years and maybe  
12 that's more likely to be fruitful.

13 THE COURT: Would you be willing to stop at 2010  
14 subject to further discovery after his deposition, Mr.  
15 Friedman?

16 MR. FRIEDMAN: Yes, Your Honor. And actually, Mr.  
17 Israel, if I may, we only requested Mr. Schechter's reports  
18 for the time prior to the attack when he was [inaudible] and  
19 he worked, according to the records, as a writer under Spector  
20 and Associates thereafter. You may have more information than  
21 has been disclosed to us about his having worked for other  
22 publications. If so, we'd like those. But my understanding  
23 was that he only worked for two employers.

24 MR. ISRAEL: That's right. The others were  
25 freelancing just writing articles.

1 THE COURT: Oh no. Yes. Well, you wouldn't be able  
2 to --

3 MR. FRIEDMAN: Yeah, I wouldn't expect there to be -  
4 -

5 THE COURT: Yes, they're not employers. He's self-  
6 employed. And obviously, he would be the best source of  
7 information --

8 MR. FRIEDMAN: Right.

9 THE COURT: -- in his freelance work. So we'll  
10 limit the scope of Mr. Schechter to employment prior to his  
11 move to the United States in 2010.

12 MR. FRIEDMAN: Well no, Your Honor. If I may,  
13 according to the records we have, and Mr. Israel may tell me  
14 I'm wrong, he did have an employer after he came to the U.S.  
15 At least that's what his records indicate. He may have done  
16 freelance work also, but he did have an employer. But I'd  
17 like to talk about that with Mr. Israel and we can agree on  
18 exactly what the universe is.

19 MR. ISRAEL: Yeah, Your Honor, I can clarify. He  
20 has had an employer full time since February of 2011.

21 THE COURT: Okay.

22 MR. FRIEDMAN: Well then I would like to have that  
23 information, Your Honor, for the reasons Your Honor stated in  
24 making the ruling.

25 THE COURT: Okay. Right, right. Okay, okay.

1 That's right. I'm sorry. Your request was for records  
2 regarding the positions he held prior to the attack.

3 MR. FRIEDMAN: Prior and --

4 THE COURT: And through whenever he left that employ  
5 and then from 2011 to the present.

6 MR. FRIEDMAN: Well actually, Your Honor, Mr.  
7 Schechter was injured in an attack in 2004.

8 THE COURT: Yes.

9 MR. FRIEDMAN: So I'm trying to do a before and  
10 after obviously --

11 THE COURT: Yes.

12 MR. FRIEDMAN: -- comparison.

13 THE COURT: Yes, yes.

14 MR. FRIEDMAN: So I would need the types of  
15 information I listed earlier --

16 THE COURT: Yes.

17 MR. FRIEDMAN: -- before and then after.

18 THE COURT: Yes. No, I'm just clarifying that you  
19 had asked for records with respect to Mr. Schechter relating  
20 to the positions he held.

21 MR. FRIEDMAN: Yes.

22 THE COURT: You know, at the time of the attack as  
23 well as after 2010, from 2010. Okay. And then Ms. Singer?

24 MR. OSEN: Yes, Your Honor. This again breaks down  
25 into a different category. Ms. Singer in the post attack

1 period had two what I described as full time jobs, one with  
2 One Family Fund, which is a not for profit that helps terror  
3 victim families, and also worked at Touro College here in New  
4 York. So certainly Touro College I would think would be  
5 responsive at least. It's a more established employer. One  
6 Family, we can certainly reach out to.

7 With respect to the period immediately preceding and  
8 following the attack she worked in a seminary as an  
9 administrator. Again, we can request those records. She also  
10 worked part time during the same period for a tour company,  
11 but again, that I think we're -- I don't know what Mr.  
12 Friedman's position is, but I think that's going to be  
13 unlikely to be a fruitful task.

14 MR. FRIEDMAN: But Gary, I would still like you to  
15 check the tour company because that was her first -- that was  
16 after the attack. And I agree with you odds are they won't  
17 have anything, but we should check.

18 MR. OSEN: We're prepared to make inquiries of all  
19 four which would subsume the period immediately preceding the  
20 attack, the seminary, the tour company and the other two, the  
21 charity as well as --

22 THE COURT: The college.

23 MR. OSEN: The college. But again, Your Honor, our  
24 concern is more of a practical one. Obviously with these  
25 kinds of employers and these kinds of records we can make the

1 request. Whether it's in the case of the Steinmetzs going to  
2 their current employer or having either the plaintiff or  
3 ourselves contact the former employers, we don't want the  
4 process here which is, to put it mildly, unlikely to yield  
5 useful information or relevant information to derail the  
6 process of completing the depositions and preparing for trial.

7 THE COURT: Yes, I agree. Well, I --

8 MR. Schwartz: My apologies. This is Stephen  
9 Schwartz. I have to get off. We're having a fire alarm here  
10 in our building. My colleague will finish it.

11 THE COURT: Okay. All right. Good luck.

12 MR. SCHWARTZ: Here the siren in the background.

13 THE COURT: I hope you get out safely.

14 MR. SCHWARTZ: Sorry about this.

15 THE COURT: Okay. I would think that as long as you  
16 made a good faith effort the defendants will be satisfied.

17 MR. FRIEDMAN: Yes. We will speak with Mr. Osen and  
18 Mr. Israel to check on their progress and in the remote event  
19 that we have any disagreement we'll come back to Your Honor,  
20 but I don't expect that to happen.

21 THE COURT: And I do agree that it is more important  
22 to get the depositions completed.

23 MR. FRIEDMAN: Right.

24 THE COURT: And in that regard, I do have two other  
25 matters I want to discuss with everybody. One is setting a

1 final damages discovery schedule. I think it is Judge  
2 Irizarry's preference that damages discovery proceed while  
3 pending preparations to get ready for trial and --

4 MR. FRIEDMAN: Well, Your Honor, just to make sure  
5 we're on the same page, the parties had previously stipulated  
6 and the Court ordered bifurcation.

7 THE COURT: Yes, yes.

8 MR. FRIEDMAN: So the notion was that especially  
9 because we have over 200 plaintiffs that there would be, under  
10 the terms of the Court's order approving the stipulation,  
11 there is to be damage discovery only if there's an adverse  
12 liability verdict. So we've done the damages discovery as  
13 best we can with respect to the 11 designated plaintiffs, but  
14 we haven't done any discovery with respect to those 11 with  
15 respect to their care givers. And we haven't even started the  
16 damages discovery with respect to the other 190 plus  
17 plaintiffs pursuant to the schedule that was approved by the  
18 Court whereby all of that would occur only if necessary if  
19 there were an adverse liability verdict. It's an enormous  
20 undertaking and I think the parties agreed and the Court  
21 approved the schedule that parties should not undertake that  
22 massive, massive expense and work unless it becomes ripe  
23 because there's an adverse liability verdict. So I refer back  
24 to the Court's prior scheduling order which provides a  
25 timetable for the damages discovery other than with respect to



1 these 11 designated plaintiffs to take place only after an  
2 adverse liability verdict.

3 THE COURT: Was that entered in both cases?

4 MR. FRIEDMAN: It was entered in all four cases.

5 THE COURT: I mean both sets of cases? Okay.

6 MR. FRIEDMAN: It was entered in all four cases.

7 THE COURT: Okay. And what was the time frame for  
8 the damages discovery?

9 MR. FRIEDMAN: I can pull out the order and --

10 THE COURT: Okay. I apologize.

11 MR. FRIEDMAN: -- email it to the Court.

12 THE COURT: Okay. We looked for it and I'm sure you  
13 are certainly more on top of all the filings.

14 MR. FRIEDMAN: I will pull that out this afternoon  
15 and circulate it to the Court with copies to Mr. Osen and Mr.  
16 Israel.

17 THE COURT: Okay. Do you have a rough idea of --

18 MR. FRIEDMAN: I think it was -- I'm confident I'll  
19 be corrected if anyone's recollection differs, but my best  
20 recollection is that it provides that in the event of an  
21 adverse liability verdict, that the damages discovery will be  
22 conducted over the next six months.

23 MR. ISRAEL: Your Honor, I'm looking at it now. It  
24 will begin within 20 days of a verdict for plaintiffs on  
25 liability and then the damages trial would begin within 180

1 and 365 days after the conclusion of the liability trial.

2 THE COURT: Okay. It's not certainly unrealistic.  
3 I guess my concern is at least with respect to the procurement  
4 of records that given the problems you've had, you've  
5 experienced with respect to the 11 that six months may be too  
6 short a time.

7 MR. FRIEDMAN: Well, if the plaintiffs want to  
8 gather the records, I have no objection to that to help  
9 expedite the process, but I think the motivation of all the  
10 parties to enter into this bifurcation was to avoid what will  
11 end up being hundreds of depositions of care givers and  
12 plaintiffs, so --

13 THE COURT: Well, the depositions I understand.

14 MR. FRIEDMAN: I have no objection --

15 THE COURT: The documenting, at least where to get  
16 the records and it's not going to get any easier particularly  
17 for the injured plaintiffs, the ones who sustained physical  
18 injuries. If they're still getting treatment, you know, then  
19 they may have gotten treatment from many, many places.

20 MR. OSEN: Your Honor, Gary Osen again. Just so  
21 that Your Honor understands sort of the landscape, in the  
22 course of discovery in the case, the plaintiffs have been  
23 producing and have produced on a rolling basis large  
24 quantities of medical records for all injured plaintiffs.

25 THE COURT: Right. That's what I thought. That's

1 what I recall we had talked about in the past. So --

2 MR. OSEN: Right. So Your Honor, the issue comes  
3 into play and has, excuse me, with respect to the 11 so-called  
4 liability plaintiffs, that defense counsel, as is their right,  
5 in reviewing those medical records and particularly those  
6 produced through the Israeli National Insurance Program see  
7 particular doctors or providers and ask for additional records  
8 or try to follow up to see if there are additional records.  
9 And that is the process that has been so time consuming and  
10 frustrating, et cetera because sort of the bulk records that  
11 the plaintiffs have obtained through the hospitals and  
12 insurance providers, those have been produced but there are,  
13 from Mr. Friedman's standpoint, in an effort to be as thorough  
14 as possible and have his opportunity to evaluate the records  
15 fully, there have been inevitably numerous follow-ups and  
16 requests for additional medical authorization forms to get  
17 additional records. So --

18 MR. FRIEDMAN: Right. Your Honor --

19 MR. OSEN: -- we're not starting from scratch but  
20 Mr. Friedman's point is well taken in terms of the labor  
21 involved in preparing to the level of depositions and the  
22 comfort level that would allow defendant to undertake that  
23 kind of process.

24 MR. FRIEDMAN: Your Honor, if I could put a little  
25 more flesh on that. It goes a little bit beyond that. Mr.

1 Osen is right that they have been producing over the years  
2 bulk records, but what we have found, and I think all parties  
3 recognize this, is that there are two very substantial things  
4 and very expensive and time consuming things that need to be  
5 done with those records. Number one, they need to be reviewed  
6 by counsel and then secondly, as Mr. Rosen said, the care  
7 givers that are identified in these bulk records need to  
8 receive authorizations. So we provide form authorizations to  
9 each of the plaintiffs for them to sign that we can then  
10 submit to the care givers so that they can produce the  
11 records. So what hasn't happened is any of that. Pursuant to  
12 the bifurcation order, what we've done is an exhaustive job  
13 with respect to the 11 plaintiffs pursuant to the parties'  
14 agreement that in order to enable us to depose them only once  
15 on both liability and damages issues, even though damages  
16 issues are not yet ripe, we would do that thorough work and  
17 that's what we've been doing with respect to the 11. But we  
18 have not even gone through the bulk files with respect to 190  
19 plus, and therefore, we haven't identified the care givers for  
20 which we need authorizations. We haven't gotten the  
21 authorizations from plaintiffs. We haven't sent them out to  
22 the care givers and we haven't gotten the files. And doing  
23 that with 190 plus plaintiffs would be an enormous expense  
24 that the bifurcation order was designed to avoid, the thinking  
25 being that --

1           THE COURT: No, I understand. I think what we're  
2 faced with is that Judge Irizarry would like to get this case  
3 ready for trial and she agrees with bifurcation, but she would  
4 like some sort of assurance that the damages trial would  
5 proceed sooner rather than later.

6           MR. FRIEDMAN: Well, if I --

7           THE COURT: I would think if we get to that point we  
8 might be in a better position to talk about settlement, and  
9 that's also on my agenda too.

10          MR. FRIEDMAN: If I may, Your Honor, let me send you  
11 the bifurcation order.

12          THE COURT: Well, we'll be able to find it.

13          MR. FRIEDMAN: Okay. And --

14          THE COURT: I understand, but --

15          MR. FRIEDMAN: If there is to be any departure from  
16 that, I can't speak for plaintiffs, but I would like to be  
17 heard because we're talking about an enormous amount of  
18 additional resources being dedicated to this on a schedule  
19 that's different from what the parties previously agreed to  
20 and what the Court ordered.

21          THE COURT: I think you were getting a little too  
22 excited as I was speaking, but I think she would like some  
23 assurance that the damages trial would proceed in reasonably a  
24 prompt fashion.

25          MR. FRIEDMAN: Right.

1           THE COURT: And so based on what I've heard you  
2 saying about the 11 plaintiffs, there will be a lag time even  
3 for the first five other plaintiffs when they go to trial,  
4 right? How much lead time do you need? With respect to the  
5 11 that you're ready to complete discovery on, I assume they  
6 will be prepared to go to trial, but they have a group of  
7 relatives who would have to be deposed, right?

8           MR. FRIEDMAN: There would be, Your Honor. Just to  
9 make sure we're all clear, we are deposing these 11 plaintiffs  
10 not because their case is going to be tried separately, it's  
11 because the plaintiffs have suggested that these people will  
12 testify in a liability trial.

13          THE COURT: Yes. No, I understand, I understand.

14          MR. FRIEDMAN: But then in the event there is a  
15 liability verdict in favor of the 200 plaintiffs, we then need  
16 to do the work necessary to have damages discovery with  
17 respect to the remaining 190 plus plaintiffs.

18          THE COURT: No, I understand. But what I'm trying  
19 to suggest to you and perhaps you'll talk about it amongst  
20 yourselves, is we'll talk about how to get the cases ready for  
21 trial and we may have to just tweak the prior order so that  
22 there will be cases that will be ready for trial sooner rather  
23 than later.

24          MR. FRIEDMAN: The point I wanted to make, Your  
25 Honor, is that --

1           THE COURT: You're not going to try all 200 of them  
2 at the same time.

3           MR. FRIEDMAN: That is what the plaintiffs propose  
4 to do, Your Honor. That's the key.

5           THE COURT: Okay.

6           MR. FRIEDMAN: That is precisely the key. That is  
7 what the plaintiffs have proposed. So we're talking about one  
8 liability trial for Credit Lyonnais, one liability trial for  
9 Nat West, one damages trial for Credit Lyonnais, and one  
10 damages trial for Nat West. That's what the order provides  
11 for. So yes, I think it is the case that, as I understand it,  
12 that plaintiffs propose to try all 200 plaintiffs at once, and  
13 that is the issue.

14          THE COURT: Okay. Maybe that's something we need to  
15 revisit, and I'll confer with Judge Irizarry about that.

16          MR. FRIEDMAN: Thank you, Your Honor.

17          THE COURT: I'll give you a chance to talk about it  
18 amongst yourselves. Maybe what makes sense is for us to have  
19 a conference and I'll set a date after I briefly explore this  
20 last issue of settlement at this juncture, but we'll set a  
21 date for our next conference to see what's a good way of  
22 proceeding so that the damages trial can be held sooner rather  
23 than later.

24               I have to say perhaps I've been relying on the fact  
25 that the parties have been generally able to work out issues

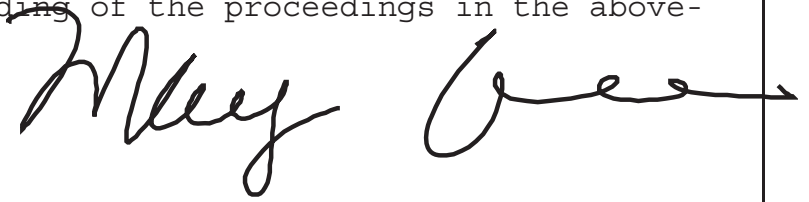
1 amongst themselves. And I do take a look at the proposed  
2 scheduling order though I can't say I have an independent  
3 recollection of any of those that I've signed in the past. It  
4 would be very difficult I would think to have a damages trial  
5 for 200 some plaintiffs even if -- I know in the Strauss case  
6 there were 40 some plaintiffs who were actually injured and  
7 another not quite ten who were killed. So, and then I guess  
8 the remaining plaintiffs in the caption are the survivors.

9           Anyway, it had not occurred to me the trial would be  
10 held for all of them at the same time. Perhaps that was my  
11 oversight in approving the schedule. But why don't you first  
12 talk about it amongst yourselves. And I'm going to go off the  
13 record now and we'll ever so briefly talk about settlement.  
14 We'll narrow it and we'll see where we go from there. And  
15 then we'll set another date for a further discovery conference  
16 or scheduling conference on how to proceed in discovery.

17                   \* \* \* \* \*



1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

A handwritten signature in black ink, appearing to read "Mary Greco", written over a horizontal line.

Mary Greco

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7 Dated: March 6, 2013  
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